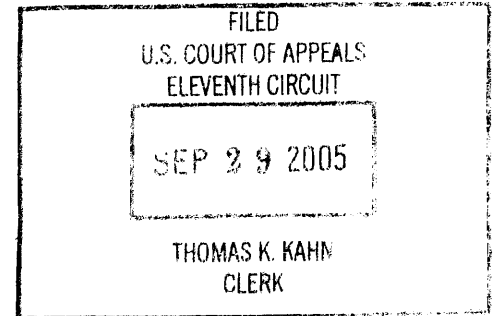


IN THE UNITED STATES COURT OF APPEALS

RECEIVED
FOR THE ELEVENTH CIRCUIT

2005 SEP 30 A 10:57

No. 05-13716-E



RONNIE FENN,

Plaintiff-Appellant,

versus

TERRY S. KING,
BURT L. SMITHHART,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Alabama

ORDER:

The appellant, in the district court, filed a notice of appeal and a motion to proceed on appeal in forma pauperis (IFP). The district court denied IFP, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess a \$255.00 appellate filing fee, as is now required under the Prison Litigation Reform Act of 1995 (April 26, 1996); see 28 U.S.C. § 1915 (as amended).

Appellant has consented to pay the \$255.00 filing fee and any additional costs assessed, using the partial payment plan described under 28 U.S.C. § 1915 (as amended). Thus, the only remaining

question is whether the appeal is frivolous. See § 1915(e)(2)(B)(i). This Court now finds that this appeal is frivolous and DENIES leave to proceed.

Within 35 days of the date of this order, appellant may file a motion for reconsideration . If the Court does not receive such a motion within 35 days, this appeal will be dismissed for lack of prosecution without further notice, pursuant to Eleventh Circuit Rule 42-1(b).

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE